

IC 31-19-9

Chapter 9. Consent to Adoption

IC 31-19-9-1

Consents required

Sec. 1. (a) Except as otherwise provided in this chapter, a petition to adopt a child who is less than eighteen (18) years of age may be granted only if written consent to adoption has been executed by the following:

- (1) Each living parent of a child born in wedlock.
- (2) The mother of a child born out of wedlock and the father of a child whose paternity has been established by:
 - (A) a court proceeding other than the adoption proceeding, except as provided in IC 31-14-20-2; or
 - (B) a paternity affidavit executed under IC 16-37-2-2.1;unless the putative father gives implied consent to the adoption under section 15 of this chapter.
- (3) Each person, agency, or county office of family and children having lawful custody of the child whose adoption is being sought.
- (4) The court having jurisdiction of the custody of the child if the legal guardian or custodian of the person of the child is not empowered to consent to the adoption.
- (5) The child to be adopted if the child is more than fourteen (14) years of age.
- (6) The spouse of the child to be adopted if the child is married.

(b) A parent who is less than eighteen (18) years of age may consent to an adoption without the concurrence of:

- (1) the individual's parent or parents; or
- (2) the guardian of the individual's person;

unless the court, in the court's discretion, determines that it is in the best interest of the child to be adopted to require the concurrence.

As added by P.L.1-1997, SEC.11. Amended by P.L.197-1997, SEC.17.

IC 31-19-9-2

Execution of consent

Sec. 2. The consent to adoption may be executed at any time after the birth of the child either in the presence of:

- (1) the court;
- (2) a notary public or other person authorized to take acknowledgments; or
- (3) an authorized agent of:
 - (A) the division of family and children;
 - (B) a county office of family and children; or
 - (C) a licensed child placing agency.

As added by P.L.1-1997, SEC.11.

IC 31-19-9-3

Validity of consent not identifying petitioner for adoption

Sec. 3. A consent to adoption that does not name or otherwise identify a petitioner for adoption is valid if the consent to adoption contains a statement, by the person consenting to adoption, that the person consenting to adoption voluntarily executed the consent to adoption without disclosure of the name or other identification of the petitioner for adoption.

As added by P.L.1-1997, SEC.11.

IC 31-19-9-4

Forms

Sec. 4. The division of family and children may furnish to the clerks of courts prescribed forms for use by parents or other persons when giving consent to adoption.

As added by P.L.1-1997, SEC.11.

IC 31-19-9-5

Filing of copies

Sec. 5. Copies of a signed consent to adoption shall be filed with the investigating agency and the clerk of the court in which the petition for adoption is pending.

As added by P.L.1-1997, SEC.11.

IC 31-19-9-6

Information and forms provided to birth parents

Sec. 6. The individual who or agency that arranges for the signing of a consent to adoption shall provide each birth parent whose consent to adoption is obtained under this chapter with the following:

- (1) An explanation concerning the:
 - (A) availability of adoption history information under IC 31-19-17 through IC 31-19-25; and
 - (B) birth parent's option to file a nonrelease form with the state registrar if the birth parent seeks to restrict the release of identifying information.
- (2) A nonrelease form prescribed by the state registrar under IC 31-19-25-4.

As added by P.L.1-1997, SEC.11.

IC 31-19-9-7

Nonrelease forms

Sec. 7. Upon request, the state registrar shall provide an individual or agency with a nonrelease form required by section 6(2) of this chapter.

As added by P.L.1-1997, SEC.11.

IC 31-19-9-8

Consent to adoption not required

Sec. 8. (a) Consent to adoption, which may be required under section 1 of this chapter, is not required from any of the following:

- (1) A parent or parents if the child is adjudged to have been abandoned or deserted for at least six (6) months immediately

preceding the date of the filing of the petition for adoption.

(2) A parent of a child in the custody of another person if for a period of at least one (1) year the parent:

(A) fails without justifiable cause to communicate significantly with the child when able to do so; or

(B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.

(3) The biological father of a child born out of wedlock whose paternity has not been established:

(A) by a court proceeding other than the adoption proceeding; or

(B) by executing a paternity affidavit under IC 16-37-2-2.1.

(4) The biological father of a child born out of wedlock who was conceived as a result of:

(A) a rape for which the father was convicted under IC 35-42-4-1;

(B) child molesting (IC 35-42-4-3);

(C) sexual misconduct with a minor (IC 35-42-4-9); or

(D) incest (IC 35-46-1-3).

(5) The putative father of a child born out of wedlock if the putative father's consent to adoption is irrevocably implied under section 15 of this chapter.

(6) The biological father of a child born out of wedlock if the:

(A) father's paternity is established after the filing of a petition for adoption in a court proceeding or by executing a paternity affidavit under IC 16-37-2-2.1; and

(B) father is required to but does not register with the putative father registry established by IC 31-19-5 within the period required by IC 31-19-5-12.

(7) A parent who has relinquished the parent's right to consent to adoption as provided in this chapter.

(8) A parent after the parent-child relationship has been terminated under IC 31-35 (or IC 31-6-5 before its repeal).

(9) A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent to adoption.

(10) A legal guardian or lawful custodian of the person to be adopted who has failed to consent to the adoption for reasons found by the court not to be in the best interests of the child.

(11) A parent if:

(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and

(B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

(b) If a parent has made only token efforts to support or to communicate with the child the court may declare the child abandoned by the parent.

As added by P.L.1-1997, SEC.11. Amended by P.L.197-1997, SEC.18; P.L.61-2003, SEC.11.

IC 31-19-9-9**Parent's crime against child's other parent; effect on consent requirement**

Sec. 9. A court shall determine that consent to adoption is not required from a parent if the:

- (1) parent is convicted of and incarcerated at the time of the filing of a petition for adoption for:
 - (A) murder (IC 35-42-1-1);
 - (B) causing suicide (IC 35-42-1-2);
 - (C) voluntary manslaughter (IC 35-42-1-3);
 - (D) an attempt under IC 35-41-5-1 to commit a crime described in clauses (A) through (C); or
 - (E) a crime in another state that is substantially similar to a crime described in clauses (A) through (D);
- (2) victim of the crime is the child's other parent; and
- (3) court determines, after notice to the convicted parent and a hearing, that dispensing with the parent's consent to adoption is in the child's best interests.

As added by P.L.1-1997, SEC.11.

IC 31-19-9-10**Parent's crime against child or child's sibling; effect on consent requirement**

Sec. 10. A court shall determine that consent to adoption is not required from a parent if:

- (1) the parent is convicted of and incarcerated at the time of the filing of a petition for adoption for:
 - (A) murder (IC 35-42-1-1);
 - (B) causing suicide (IC 35-42-1-2);
 - (C) voluntary manslaughter (IC 35-42-1-3);
 - (D) rape (IC 35-42-4-1);
 - (E) criminal deviate conduct (IC 35-42-4-2);
 - (F) child molesting as a Class A or Class B felony (IC 35-42-4-3);
 - (G) incest as a Class B felony (IC 35-46-1-3);
 - (H) neglect of a dependent as a Class B felony (IC 35-46-1-4);
 - (I) battery of a child as a Class C felony (IC 35-42-2-1(a)(3));
 - (J) battery as a Class A felony (IC 35-42-2-1(a)(5)) or Class B felony (IC 35-42-2-1(a)(4)); or
 - (K) an attempt under IC 35-41-5-1 to commit an offense described in clauses (A) through (J);
- (2) the child or the child's sibling, half-blood sibling, or step-sibling of the parent's current marriage is the victim of the offense; and
- (3) after notice to the parent and a hearing, the court determines that dispensing with the parent's consent to adoption is in the child's best interests.

As added by P.L.1-1997, SEC.11. Amended by P.L.222-2001, SEC.1.

IC 31-19-9-11

Reserved

Reserved

IC 31-19-9-12

When consent of putative father irrevocably implied

Sec. 12. A putative father's consent to adoption is irrevocably implied without further court action if the putative father:

(1) fails to file:

(A) a motion to contest the adoption in accordance with IC 31-19-10; and

(B) a paternity action under IC 31-14;

within thirty (30) days after service of notice under IC 31-19-4;

(2) having filed a motion to contest the adoption in accordance with IC 31-19-10, fails to appear at the hearing set to contest the adoption;

(3) having filed a paternity action under IC 31-14, fails to establish paternity in the action; or

(4) is required to but fails to register with the putative father registry established by IC 31-19-5 within the period under IC 31-19-5-12.

As added by P.L.1-1997, SEC.11. Amended by P.L.197-1997, SEC.19; P.L.200-1999, SEC.20.

IC 31-19-9-13

Challenge of adoption or validity of implied consent by putative father; when precluded

Sec. 13. A putative father whose consent to adoption is implied under this chapter or IC 31-19-5-18 is not entitled to challenge:

(1) the adoption; or

(2) the validity of the putative father's implied consent to the adoption.

As added by P.L.1-1997, SEC.11.

IC 31-19-9-14

Establishment of paternity by putative father; when precluded

Sec. 14. A putative father whose consent to adoption of a child is implied under this chapter or IC 31-19-5-18 is not entitled to establish paternity under IC 31-14.

As added by P.L.1-1997, SEC.11.

IC 31-19-9-15

When consent of putative father irrevocably implied; additional circumstances

Sec. 15. (a) The putative father's consent to adoption of the child is irrevocably implied without further court action if the father:

(1) fails to file a paternity action:

(A) under IC 31-14; or

(B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;

not more than thirty (30) days after receiving actual notice under IC 31-19-3 of the mother's intent to proceed with an adoptive placement of the child, regardless of whether the child is born before or after the expiration of the thirty (30) day period; or

(2) files a paternity action:

(A) under IC 31-14; or

(B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;

during the thirty (30) day period prescribed by subdivision (1) and fails to establish paternity in the paternity proceeding under IC 31-14 or the laws applicable to a court of another state when the court obtains jurisdiction over the paternity action.

(b) This section does not prohibit a putative father who meets the requirements of section 17(b) of this chapter from establishing paternity of the child.

As added by P.L.1-1997, SEC.11. Amended by P.L.200-1999, SEC.21.

IC 31-19-9-16

Challenge of adoption or validity of irrevocably implied consent by putative father; when precluded

Sec. 16. A putative father whose consent to adoption is irrevocably implied under section 15 of this chapter is not entitled to contest:

(1) the adoption; or

(2) the validity of the putative father's implied consent to the adoption.

As added by P.L.1-1997, SEC.11.

IC 31-19-9-17

Establishment of paternity by putative father; restrictions

Sec. 17. (a) A putative father whose consent to an adoption is implied under section 15 of this chapter is not entitled to establish paternity of the child:

(1) in a court proceeding under IC 31-14; or

(2) by executing a paternity affidavit under IC 16-37-2-2.1.

(b) Notwithstanding subsection (a), a putative father who is barred from establishing paternity of the child under subsection (a) may establish paternity of the child in a court proceeding under IC 31-14 if:

(1) the putative father submits, together with the petition to establish paternity, an affidavit prepared by the:

(A) licensed child placing agency; or

(B) attorney;

that served notice or caused notice to be served upon the putative father under IC 31-19-3-1 stating that neither a petition for adoption nor a placement of the child in a proposed adoptive home is pending; and

(2) the court finds on the record, based on all the information

available to the court, including an affidavit described under subdivision (1), that neither a:

(A) petition for adoption; nor

(B) placement of the child in a prospective adoptive home; is pending.

The requirements of this subsection are jurisdictional and must be strictly adhered to by the putative father and the court.

(c) An individual who is otherwise barred from establishing paternity under this article may establish paternity in relation to a child if an adoption for the child is not pending or contemplated. A petition for adoption that is not filed or a petition for adoption that is dismissed is not a basis for enabling an individual to establish paternity under this section unless the requirements of subsection (b) are satisfied.

As added by P.L.1-1997, SEC.11. Amended by P.L.200-1999, SEC.22; P.L.61-2003, SEC.12.

IC 31-19-9-18

When implied consent to adoption irrevocable

Sec. 18. (a) The consent of a person who is served with notice under IC 31-19-4.5 to adoption is irrevocably implied without further court action if the person:

(1) fails to file a motion to contest the adoption as required under IC 31-19-10 not later than thirty (30) days after service of notice under IC 31-19-4.5; or

(2) files a motion to contest the adoption as required under IC 31-19-10 but fails to:

(A) appear at the hearing to contest the adoption; and

(B) prosecute the motion to contest without unreasonable delay.

(b) A court shall dismiss a motion to contest an adoption filed under subsection (a)(2) with prejudice and the person's consent to the adoption shall be irrevocably implied if the court finds that the person who filed the motion to contest is failing to prosecute the motion without unreasonable delay.

As added by P.L.61-2003, SEC.13.

IC 31-19-9-19

Implied consent to adoption bar to adoption challenge

Sec. 19. A person whose consent to adoption is irrevocably implied under section 18 of this chapter may not contest the adoption or the validity of the person's implied consent to the adoption.

As added by P.L.61-2003, SEC.14.